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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,091	02/23/2004	Kurt Hamilton	HAMMI.10040	6895
38715	7590	12/10/2007		
JEROME V. SARTAIN			EXAMINER	
MIND LAW FIRM			LAUX, JESSICA L	
2424 S.E. BRISTOL STREET				
SUITE 300				
NEWPORT BEACH, CA 92660				
			ART UNIT	PAPER NUMBER
			3635	
			MAIL DATE	DELIVERY MODE
			12/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/784,091	Applicant(s) HAMILTON, KURT	
	Examiner Jessica Laux	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 10, 11, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 10, 11, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>09/25/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of the amendment filed 08/31/2007. Accordingly the claims have been amended.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Information Disclosure Statement

The information disclosure statement filed 09/25/2007 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the foreign references referred to therein have not been considered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 10-11 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3749692 to Scocos et al.

Regarding claims 1, 10 and 16: Scocos discloses a caulk for use in a drywall joint construction consisting essentially of:

a joint finishing system installed within a crack to complete a drywall joint construction, the system including a flexible layer forming the center-line surface, the flexible layer being a caulk, where the caulk fills the slit between adjacent boards so as to flush the joint finishing system with the planar surfaces of the drywall (or gypsum) boards (Col. 1, lines 24-25; Col. 3, lines 32-62; Col. 5, lines 6-7 and 18-22).

While the prior art reference disclose a drywall construction containing a joint with a joint finishing system consisting of caulk, the reference does not disclose the exact structure of the gypsum boards used in the construction.

However, the Office takes official notice that it is notoriously common and well known in a dry wall construction to use a drywall (or gypsum) boards having a first lengthwise edge and an outwardly-facing first planar surface that is substantially perpendicular to the edge; where a second drywall board is positioned adjacent a first drywall board such that the first and second lengthwise edges are brought into substantially abutting contact so as to form a lengthwise crack, configured as an outwardly opening slit, between the first and second planar surfaces, thereby forming a center-line surface of the joint construction which is defined as the outwardly-facing surface directly over the crack and exposed for surface treatment.

Since the claimed drywall (or gypsum board) is so notoriously common and well known/used in the art as well as the construction of two boards placed adjacent forming a crack it would have been an obvious matter of design choice to a person of ordinary skill in the to use such a board because it is easily obtained.

Regarding claim 11: The construction of claim 10 wherein the caulk comprises a non- shrinking formulation (Col. 4, lines 52-54; where it is disclosed that silica is a filler to reduce shrinkage and it is later disclosed that a composition containing more silica is excellent for interior applications such as with drywall).

Regarding claim 17: Claim 17 merely recites the obvious method steps of "positioning" the boards and "filling" with the caulk to form the drywall construction as disclosed by Scocos above. These steps would have been obvious to one of ordinary skill in the art making the drywall construction of Scocos and therefore do not patentably distinguish over the prior art.

Claims 1, 10 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hornaman (6884830).

Regarding claims 1, 10 and 16: Hornaman discloses a caulk for use in a drywall joint construction consisting essentially of:

a joint finishing system installed within a crack to complete a drywall joint construction, the system including a flexible layer forming the center-line surface, the flexible layer being a caulk, where the caulk fills the slit between adjacent boards so as to flush the joint finishing system with the planar surfaces of the drywall (or gypsum) boards (Col. 3, lines 19-20).

While the prior art reference disclose a drywall construction containing a joint with a joint finishing system consisting of caulk, the reference does not disclose the exact structure of the gypsum boards used in the construction.

However, the Office takes official notice that it is notoriously common and well known in a dry wall construction to use a drywall (or gypsum) boards having a first lengthwise edge and an outwardly-facing first planar surface that is substantially perpendicular to the edge; where a second drywall board is positioned adjacent a first drywall board such that the first and second lengthwise edges are brought into substantially abutting contact so as to form a lengthwise crack, configured as an outwardly opening slit, between the first and second planar surfaces, thereby forming a center-line surface of the joint construction which is defined as the outwardly-facing surface directly over the crack and exposed for surface treatment.

Since the claimed drywall (or gypsum board) is so notoriously common and well known/used in the art as well as the construction of two boards placed adjacent forming a crack it would have been an obvious matter of design choice to a person of ordinary skill in the to use such a board because it is easily obtained.

Regarding claim 17: Claim 17 merely recites the obvious method steps of "positioning" the boards and "filling" with the caulk to form the drywall construction as disclosed by Hornaman above. These steps would have been obvious to one of ordinary skill in the art making the drywall construction of Hornaman and therefore do not patentably distinguish over the prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JEANETTE CHAPMAN/
PRIMARY EXAMINER

JL
11/14/2007